

*This checklist was developed for use by examiners as part of policy and forms review.*

**Checklist for Individual Fixed Annuity Products**

Insurer\_\_\_\_\_

NAIC #\_\_\_\_\_

Name of product\_\_\_\_\_

Contact Person, Title\_\_\_\_\_

Address\_\_\_\_\_

Telephone\_\_\_\_\_ Fax\_\_\_\_\_

Date received\_\_\_\_\_ Reviewed by\_\_\_\_\_

SRB#\_\_\_\_\_

Notes:

## **Contents of Actuarial Memorandum**

- \_\_\_ Each submission must be accompanied by an actuarial memorandum prepared and signed by an actuary that includes the following:
  - \_\_\_ A description of the product;
  - \_\_\_ The mathematical formulas, sample numerical calculations and a detailed statement of the method used to compute contract values and reserves and nonforfeiture benefits;
    - \_\_\_ A statement that each form's nonforfeiture values are not less than those required by Massachusetts law OR
    - \_\_\_ A statement that no nonforfeiture values are required by Massachusetts law, and a detailed demonstration on how net premiums and/or values meet the exclusionary requirement of M.G.L. c. 175, § 144A. *SRB Bulletin 90-02*
- \_\_\_ Any additional data, tables, and information necessary for a comprehensive review of the forms. *SRB Bulletin 90-02*

## General Requirements

- \_\_\_ Each submission must include a certification by a company official that each form meets the objective standards of M.G.L. c. 175 §2B. If an insurer feels that a form is exempt from chapter 175 §2B, the basis for the contention must be stated in the cover letter. The term "text" includes all printed matter except the name and address of the insurer, name or title of the contract, the brief description, if any, captions and subcaptions, and schedule pages and tables. *M.G.L. c. 175 §2B*
  - \_\_\_ The text achieves a minimum Flesch score of 50. The Flesch score for each form must be stated in the certification: a statement to the effect that the score exceeds 50 is not permitted.
  - \_\_\_ The other objective standards of Chapter 175 §2B, section 1 are met:
    - a. It is printed, except for tables, in not less than ten point type, one point leaded.
    - b. The style, arrangement and overall appearance of the contract give no undue prominence to any portion of the text of the contract and any endorsements or riders;
    - c. It contains a table of contents or an alphabetical subject index;
    - d. The width of margins and ink to paper contrast do not unreasonably interfere with the readability of the form; and
    - e. The organization of the content of the contract and the summary of the contract is conducive to understandability of the form.
- Note: All provisions of law relative to the filing of contract forms shall also apply to all applications designed to be attached to such contract forms and when so attached to constitute a part of the contract. *M.G.L. c. 175 § 192***

- \_\_\_ All contracts must be headed by the corporate name of the company. If two or more insurers are under a common management and represent themselves to be or are customarily known as an insurance company group or similar insurance trade designation, they may, with the approval of the commissioner, head or title contracts with the name of the group or similar trade designation or with the names of the individual members of the group, provided that the company assuming the insurance is specifically identified. *M.G.L. c. 175, §18*
- \_\_\_ All contracts must be signed by the insurer's secretary or an assistant secretary, or in their absence by a temporary secretary, and by its president or a vice-president, or in their absence by two directors. Riders or endorsements may be signed by one of the aforesaid officers of the company. **(Note: does not apply to riders or endorsements providing special benefits under M.G.L. c. 175, § 24.)** A facsimile of the required signature is acceptable. *M.G.L. c. 175, §33*
- \_\_\_ An annuity must contain on the first page in bold letters a plain description of the contract, "so fully defining its character, including dividend periods and other peculiarities, that the holder thereof shall not be likely to mistake the nature or scope of the contract." *M.G.L. c. 175, §129*
- \_\_\_

### Mandatory Contract Provisions

☐ There must be a "free look" period of at least 10 days. *M.G.L. c. 176D*

☐ Is this a contract that may be used for replacement?

☐ yes ☐ no

If yes, the insurer must include a notice in the contract, or a separate notice to be delivered with a replacement contract, that in the event of replacement, the free look period is 20 days. *211 CMR 34.06(1)(d)*

Compliance with M.G.L. c. 175, § 118:

☐ Must state the amount of benefits payable, the manner of payment and the consideration;

☐ Benefits cannot be contingent upon assessments upon survivors

**Note: extra compensation may be charged by a company to the insured for engaging in naval or military service in time of war.**

Is the contract a Deferred Annuity with a Fixed Account?

☐ Yes ☐ No

If yes, a table of cash surrender values for at least twenty (20) years must be included.

## Prohibitions

### *General Prohibitions*

Prohibitions under M.G.L. c. 175, § 22: No annuity may contain any condition, stipulation or agreement:

- \_\_\_ Depriving the courts of the commonwealth of jurisdiction of actions against the company;
  - \_\_\_ Limiting the time for commencing actions against the company to a period of less than two years from the time when the cause of action accrues;
  - \_\_\_ Making any person appointed and licensed as the company's agent the agent of the applicant, or contract holder for any purpose;
  - \_\_\_ Providing that no person shall be deemed an agent of the company unless authorized by the company in writing;
  - \_\_\_ Providing that any p contract made in the commonwealth on lives, property or interests therein shall be governed by the laws of any other state or country.
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- \_\_\_ Contracts may not include a requirement that all disputes or controversies be resolved by binding arbitration. But note that any provision that says the parties *may* agree to mediation or arbitration is permissible. The prohibition is based on the requirement that applicants waive their legal rights, or the rights of beneficiaries, set forth in M.G.L. c. 93A, § 9.
  - \_\_\_ Contracts may not include a limitation or exclusion on the recovery of punitive damages in the event of a dispute or controversy. *Such a limitation would be inconsistent with rights granted under M.G.L. c. 93A.*

### *Anti-discrimination provisions*

- \_\_\_ No life company shall make or permit any distinction or discrimination in favor of individuals between insureds of the same class and equal expectation of life in the amount or payment of premiums or rates charged for an annuity or pure endowment contracts, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes. *M.G.L. c. 175, § 120*

## Optional Provisions

The following provisions may in substance be included (*i.e.* the contract does not have to have these provision; however, if included, they must be substantially similar to the following):

### *Optional conversion, alteration, or exchange of contracts*

\_\_\_ Any life company may, at the request of the holder, exchange, alter or convert any annuity issued by it, or a company that is admitted and authorized under chapter 175 and is an affiliate of it, as defined in section 206, hereinafter called the original policy, for or into any policy of life or endowment insurance, hereinafter called the rewritten policy, as of the date of the most recently issued original policy or as of the current date, or as of any intermediate date, conforming with the laws in force as of the date of issue which the rewritten policy bears; provided, that:

\_\_\_ if the rewritten policy bears a date prior to the date of application for exchange, alteration or conversion, the amount of insurance under the rewritten policy may not exceed the greater of (a) the amount of insurance under the original policy or policies if of life or endowment insurance, or (b) the amount of insurance which the premium paid for the original policy or policies would have purchased if the rewritten policy had been originally issued as of the date of issue it bears. Nothing in section 120 shall be construed to prohibit the exchange, alteration or conversion of a policy of life or endowment insurance or annuity under this section, and sections 123 and 130 shall not apply to a rewritten policy issued under the authority of this section. Nothing in section 131 or section 132 shall be construed to prohibit making the application for the original policy, if one of life or endowment insurance, or the application for the rewritten policy issued under authority of this section, or both such applications, a part of the rewritten policy, by endorsing thereon or attaching thereto a copy of either or both such applications. Nothing in said section one hundred and thirty-two shall be construed to prohibit the incorporation, by a rider or endorsement or otherwise, in a rewritten policy issued under authority of this section and bearing a then current date or an intermediate date of a stipulation making the incontestable provision required by said section 132 operative from the date of issue of the most recently issued original policy, if one of life or endowment insurance. *M.G.L. c. 175, § 139*

### Policy loan interest rates

\_\_\_ Does the annuity contract provide for policy loans?

\_\_\_ yes                      \_\_\_ no

If yes, then the following section applies:

\_\_\_ For the purpose of this section, "Published monthly average" shall mean: (a) the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc. or any successor thereto; or (b), in the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published, a substantially similar average, established by regulations promulgated by the commissioner. *M.G.L. c. 175, §142(1)*

\_\_\_ If the term is used in the policy, the policy definition must be the same as the above or substantially similar.

For purposes of this section:

\_\_\_ The term "policy" includes annuity contracts which provide for policy loans. *M.G.L. c. 175, §142(11)(d)*

\_\_\_ The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of policy. *M.G.L. c. 175, §142(11)(a)*

\_\_\_ The term "policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due. *M.G.L. c. 175, §142(11)(b)*

\_\_\_ The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer. *M.G.L. c. 175, §142(11)(c)*

\_\_\_ For any policy of life insurance issued or delivered in the commonwealth by any life company, the policy must contain a provision:

\_\_\_ that states that after premiums have been paid for at least three full years, the holder thereof, upon written application therefor to the company at its home office and upon an assignment of the policy to the company, in a form satisfactory to it, shall be entitled to a loan from the company of a sum not exceeding its loan value, on the sole security of the policy. *M.G.L. c. 175, §142(2)*

\_\_\_ permitting (a), an interest rate on such loan of not more than eight percent per annum; or (b) a provision permitting an adjustable maximum interest rate on such loan established from time to time by the insurer. *M.G.L. c. 175, §142(3)*

\_\_\_ If the provision for a loan is made under clause (b) above:

\_\_\_ the rate of interest charged on a policy loan shall not exceed the higher of either: (a) the published monthly average for the calendar month ending two months before the date on which the rate is determined; or (b) the rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum. *M.G.L. c. 175, §142(4)*

\_\_\_ the policy must contain a provision setting forth the frequency at which the rate is to be determined for such policy. *M.G.L. c. 175, §142(5)*

\_\_\_ The maximum rate for each policy must be determined at regular intervals at least once every twelve months, but not more frequently than once in any three month period. At the intervals specified in the policy, the rate being charged: (a), may be increased

whenever such increase as determined under c. 175, §142(4) would increase the rate by one-half percent or more per annum; and (b), must be reduced whenever such reduction as determined under c. 175§ 142(4) would decrease that rate by one-half percent or more per annum. *M.G.L. c. 175, §142(6)*

- \_\_\_ The policy must state that the life insurer shall:
  - \_\_\_ (a) notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;
  - \_\_\_ (b) notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan; provided, however, that notice need not be given to the policyholder when a further premium loan is added, except as provided in clause (c);
  - \_\_\_ (c) send to policyholders with loans reasonable advance notice of any increase in the rate; and
  - \_\_\_ include in the notices required in clauses (a), (b) and (c) the substance of the pertinent provisions of c. 175 §142(3) and (5). *M.G.L. c. 175, §142(7)*
- \_\_\_ The policy must state that the loan value will be an amount which, together with interest as aforesaid to the end of the current policy year, shall equal the cash surrender value available at the end of the said policy year under the policy, including the cash surrender value of any existing paid-up additions thereto, if the policy is then free from indebtedness. The company shall deduct from such loan value any existing indebtedness, including accrued interest thereon, and may also deduct any unpaid portion of the premium for the then current policy year. Failure to repay any loan under the policy or to pay interest thereon shall not avoid the policy until the total indebtedness, including accrued interest thereon, is equal to or exceeds the loan value, nor until thirty days after notice has been mailed by the company to the last known address of the holder. The affidavit of any officer, clerk or agent of the company or of any one authorized to mail such notice, that the notice required by this section has been duly mailed by the company, shall be prima facie evidence that such notice was duly given. Nothing in this section shall require any company to make a loan upon any policy for less than twenty-five dollars. *M.G.L. c. 175, §142(8)*
- \_\_\_ The policy must state that the life insurer will not terminate a policy in a policy year as the sole result of a change in the interest rate during such policy year, and the life insurer shall maintain coverage during such policy year until the time at which it would otherwise have terminated if there had been no change during such policy year. *M.G.L. c. 175, §142(9)*



## Nonforfeiture Requirements

Must meet requirements of M.G.L. c. 175, § 144A:

**Note:** that every deferred annuity contract, other than a single premium contract, issued and delivered in the commonwealth by a domestic life company shall provide that, in the event of the nonpayment of any premium after three full years' premiums have been paid, the annuity shall, without any further act or stipulation, be converted into a paid-up annuity for such proportion of the original annuity as the number of completed years' premiums paid bears to the total number of premiums required under the contract; provided, however that this subdivision shall not apply to any annuity contract subject to the provisions of section one hundred and forty-four A.

*M.G.L. c. 175, § 144, 9*

M.G.L. c. 175, § 144A does **not** apply to the following:

- ☐ any reinsurance,
- ☐ group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code,
- ☐ premium deposit fund,
- ☐ variable annuity,
- ☐ investment annuity,
- ☐ immediate annuity,
- ☐ any deferred annuity contract after annuity payments have commenced,
- ☐ reversionary annuity, or
- ☐ any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract. *M.G.L. c. 175, § 144A, 10.*

**Note:** Notwithstanding the requirements of M.G.L. c. 175, § 144A, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than \$20 monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

### *Requirements of § 144A*

No contract of annuity may be delivered or issued for delivery in Massachusetts unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the Commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

- \_\_\_ That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subdivisions 3, 4, 5, 6 and 8 of M.G.L. c. 175, § 144A. *M.G.L. c. 175, § 144A, 1.(a)*
- \_\_\_ If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subdivisions 3, 4, 6 and 8 of M.G.L. c. 175, § 144A. The company may reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract. *M.G.L. c. 175, § 144A, 1.(b).*
- \_\_\_ A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits. *M.G.L. c. 175, § 144A, 1.(c).*
- \_\_\_ A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract. *M.G.L. c. 175, § 144A, 1.(d).*

### *Equity Index*

Is this policy going to contain any Equity Indexed benefits? If yes, please answer provide the following information:

Note that all of the following requirements apply in addition to those for the underlying product.

***Note: the citation for all of the items listed below is Bulletin 98-17***

- \_\_\_ The filing must include a description of the investment plan used to fund the policy, if not addressed in the actuarial memorandum.
- \_\_\_ The filing must set forth an example of the annual statement provided to policyholders.
- \_\_\_ The filing must include a certification by a duly authorized officer of the company that (1) the company will provide the State Rating Bureau any additional information relative to reserves that the Division may request at a later date; and (2) that any changes in investment strategies relative to the filing will be filed with the Division on an ongoing basis.

### *Application*

- \_\_\_ The policy application must include a prominent acknowledgment disclosing that the applicant understands that he/she is applying for an equity indexed product.
  - \_\_\_ This disclosure statement must be set forth (in at least 10 point type) immediately preceding the signature line.
- \_\_\_ The acknowledgment statement must also disclose that while the values of the policy may be affected by an external index, the policy does not directly participate in any stock or equity investments.
- \_\_\_ It must include a statement of understanding that any values shown, other than guaranteed minimum values, are not guarantees, promises or warranties.

### *Cover Page*

- \_\_\_ The cover page must contain a prominent notice accurately describing the contract's involvement with an external index. The notice should disclose that while values of the policy may be affected by an external index, the policy does not directly participate in any stock or equity investments.

### *Disclosure Requirements*

All policy forms must include the following provisions:

- \_\_\_ A description of the death benefit provided by the policy and how the death of the policyholder affects the cash value and excess interest accumulation in the policy.
- \_\_\_ A disclosure of all available indexed periods and the date of expiration of the elected period.
  - \_\_\_ The contract form must clarify what happens upon expiration of an indexed period.
- \_\_\_ If a policy is to be linked to an index for some specified period less than the time to the maturity date of the policy, then the expiration date of such period and any minimum guaranteed rates applied thereafter must be specified.
- \_\_\_ A description of the formula used to determine indexed credits and indexed value.
- \_\_\_ Provide for and describe the use of a substitute index in the event that the named index is discontinued. The policy must:
  - \_\_\_ describe the means by which the policyholder will be notified of the substitute index.
  - \_\_\_ inform the policyholder that advance notification of a change in the index will be provided to the Division.
  - \_\_\_ state that the insurer will provide an endorsement that was filed with the Division naming the substitute index.
- \_\_\_ If premiums may be allocated to different accounts applicable to different portions of the policy value, then the policy must contain a description of the allocation of interest credits.
- \_\_\_ Disclose the minimum guaranteed rates that apply until the maturity date of the policy.
- \_\_\_ A description of the policy's value upon surrender during an indexed term, at the end of the term, or at any time prior to maturity.
- \_\_\_ A disclosure of the guaranteed participation rate at issue and during the first indexed period.
  - \_\_\_ If the participation rate may be redetermined at any time during an indexed period or at the end of an indexed period, the policy must clearly disclose the minimum participation rate for all periods and the factors which would lead to a change in any participation rate.

- \_\_\_ If the policy contains a cap or floor for the indexed benefits, then the policy must clearly disclose any guaranteed cap or floor at issue and during the first indexed period. If the cap or floor may be redetermined during an indexed period or at the end of the guaranteed period, the policy must clearly describe the minimum cap or floor relative to the indexed benefits.
- \_\_\_ A disclosure that states that in the event of insolvency of the issuing insurer, policyholders look to the guaranty fund system in which the policyholder resides and cautions policyholders to contact said in-state guaranty fund system for more information about the nature, existence and degree of coverage.

### *Prohibitions*

Policies may **not** do the following:

- \_\_\_ Use investment terms such as investment performance, investment returns, maximizing returns, Wall Street or the stock market except with extreme care and with appropriate caveats.
- \_\_\_ Describe the equity indexing feature or formula as a means of participation in the stock market, the equity markets or the S & P 500 or other index, although indexing may be appropriately described as providing the potential for higher excess interest rates over the long term.
- \_\_\_ Provide a partial or complete list of the stocks or companies that constitute the index.
- \_\_\_ Stress similarities to variable products, mutual funds or other investment vehicles.

### *Advertising Materials*

- \_\_\_ The filing must include all advertising materials, including any illustrations used in marketing the contract form.
- \_\_\_ Language in marketing materials must be balanced and must disclose:
  - \_\_\_ that the policy does not directly participate in any stock or equity investments;
  - \_\_\_ that failure to maintain the policy to maturity may result in no participation in the equity index;
  - \_\_\_ the participation rate and its relation to the equity index, including an invitation to contract, the excess interest formula, any caps or floors on excess interest, surrender and other charges and the guaranteed minimum rate of interest payable;
  - \_\_\_ the death benefit provided by the policy and how the death of the policyholder affects cash value and excess interest accumulation in the policy.

## *Contents of the Actuarial Memorandum*

These requirements are in addition to those for the underlying product.

***Note: the citation for all of the items listed below is Bulletin 98-17***

The Actuarial Memorandum, prepared and signed by a qualified actuary, must contain the following:

- \_\_\_ 1. A description of the policy.
- \_\_\_ 2. A description of the index used and the criteria for selecting a substitute index if the current index is no longer in existence or applicable.
- \_\_\_ 3. A description of how index-based benefits are calculated, including formula definitions, descriptions of calculations of level, up and down index scenarios, and descriptions of the minimum cap and floor for all indexed products.
- \_\_\_ 4. A description of reserving methods.
- \_\_\_ 5. A description of asset adequacy testing methodologies used to address product features unique to the equity indexed product.
- \_\_\_ 6. A statement by a qualified actuary that the reserve method should produce reserves that meet the minimum statutory requirements.
- \_\_\_ 7. If the policy contains a provision allowing insureds to withdraw funds without a surrender charge, the actuarial memorandum should demonstrate that proposed reserves are at least equal to the accumulation value rather than the surrender value.

The filing must include a statement of the hedging policy, which must clearly disclose and include the following matters:

- \_\_\_ 1. A description of hedging instruments, if any, that are planned to be acquired to fund the obligations inherent in the policy.
- \_\_\_ 2. A description of the methods used to determine the amount and type (including maturity and strike price) of hedging instruments, if any, used to hedge the risks associated with the indexed obligations.
- \_\_\_ 3. A description of the methods used to determine the extent of rebalancing of the portfolio supporting the product and the frequency of rebalancing.
- \_\_\_ 4. A description of the responsibilities within the company with regard to the individual(s) who determine(s) the hedging policy, approve the hedging policy and carry out the hedging policy.
- \_\_\_ 5. A description of risk-handling associated with purchasing such hedging instruments, including liquidity, credit, market, pricing, legal and operational risks associated thereto.
- \_\_\_ 6. Detailed support for any required reserve certifications relative to "reasonableness of assumptions".
- \_\_\_ 7. If the reserving method is based on attaining any "hedged as required" criteria, a description of how such criteria will be met.

